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COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on
Economic, Social and Cultural Rights

SWITZERLAND

1. The Committee considered the initial report of Switzerland (E/1990/5/Add.33) concerning the rights covered by articles 1 to 15 of the International Covenant on Economic, Social and Cultural Rights at its 37th to 39th meetings, held on 20 and 23 November 1998, and adopted the following concluding observations. 1/

A. Introduction

2. The Committee notes that the report submitted by the State party has been prepared in accordance with the Committee's guidelines. It welcomes the presence of a large and high-level delegation from the capital and notes that the very high quality of the dialogue was enhanced by the presence of a specialist to deal with virtually every article of the Covenant.

3. The Committee greatly appreciates the Swiss delegation's frank, detailed replies to all its questions, which enabled it to gain an overall idea of the way in which Switzerland is discharging its obligations under the International Covenant on Economic, Social and Cultural Rights.

1/ At the 55th meeting (nineteenth session) on 3 December 1998.

B. Positive aspects

4. The Committee notes with satisfaction that the Covenant has begun to be accepted as an integral part of the Swiss legal system. It notes that the Swiss courts, and notably the Federal Tribunal, have already on some occasions referred to the provisions of the Covenant. In this respect, the Committee notes with satisfaction that the decisions of the Federal Tribunal seem to have remedied somewhat the shortcomings of the Federal Constitution regarding articles 9, 11 and 12 of the Covenant.

5. The Committee expresses its appreciation of the range and quality of the services provided to the population as a whole, in particular social benefits for elderly persons and the disabled.

6. The Committee notes the large number of foreigners residing in the State party and welcomes the measures taken by the authorities to ensure the enjoyment of their economic, social and cultural rights.

7. The Committee also notes the efforts made by the Government of Switzerland to integrate foreign workers and their families.

C. Factors and difficulties impeding the implementation of the Covenant

8. The Committee notes the absence of any significant factors or difficulties preventing the effective implementation of the Covenant in Switzerland.

D. Principal subjects of concern

9. The Committee recognizes that the State party's federal structure requires that certain rights be provided for by the Cantons, nevertheless it reaffirms the Committee's position that it is the legal responsibility of the Federal Government to ensure the implementation of the Covenant.

10. The Committee disagrees with the position of the State party that provisions of the Covenant constitute principles and programmatic objectives rather than legal obligations, and that consequently the provisions of the Covenant cannot be given legislative effect. The Committee does not share the view of the Swiss authorities and recalls that in its General Comment No. 3 of 1990 on the nature of States parties' obligations under article 2 of the Covenant, it refers to a number of provisions in the Covenant, such as those of article 8 on the right to strike and those of article 13 on the right to education, which seem to be capable of immediate application within the judicial system. The Committee is of the view that any suggestion that the above-mentioned provisions are inherently non-self-executing seems to be difficult to sustain.

11. The Committee expresses concern at the situation in the State party where certain Covenant rights are not constitutionally recognized, i.e the right to work, to education and to culture. In the Committee's view, the freedom to exercise a lucrative activity is not synonymous or co-terminous with the right to work. In this respect, the Committee regrets that

implementation of these rights has to be sought by individuals before the Courts, whereas they should be constitutionally recognized.

12. The Committee notes that despite the high level of development reached by Switzerland and the strength of its economy, there exist unacceptable levels of poverty among certain segments of the population, in particular among women.

13. The Committee, while noting that draft legislation concerning the right to strike by civil servants is to be put to popular vote, regrets that this right still remains restricted for civil servants. The Committee further notes with concern that the reform of the statute on civil servants currently under way providing for the privatization of certain public service, at the federal, cantonal and communal levels, might infringe upon the acquired rights of civil servants, as recognized under the Covenant.

14. The Committee is concerned at the non-ratification by the State party of ILO Conventions Nos. 98 and 174.

15. The Committee notes that despite the constitutionalization of the right to maternity benefits, the Parliament has not yet recognized this right. This does not, in the Committee's view, satisfy the requirements of article 10 that pregnant women should be entitled to adequate social security benefits.

16. The Committee takes the view that despite the existence of legislation providing protection against discrimination, de facto discrimination against women and ethnic minorities continues to exist.

17. The Committee notes with concern that, in many areas, such as access to higher education, access to posts of responsibility and equal remuneration for work of equal value, equality between men and women has not yet been achieved in practice.

18. The Committee regrets the relatively high proportion of women in lower paid jobs and among part-time and "on-call" workers, and also the comparatively low proportion of women in higher education.

19. The Committee notes with concern the high incidence of domestic violence against women, which the State party has estimated at 110,000 cases per year. It regrets that the lack of more detailed statistics has not allowed the Committee to obtain a clear picture of the situation in the State party in this respect.

20. The Committee also regrets that the available statistical data on violence against women and child abuse, including paedophilia, have not been analysed and used to formulate measures to address these problems. It regrets that this lack of information has prevented both the Government and the Committee from appreciating the extent of these problems.

21. The Committee is concerned that the State party's report lacks any information on the mental health of the population as a whole and on the health of mental patients in particular.

22. The Committee regrets the silence of the report on abortion and the incidence of diseases particular to women.

23. The Committee expresses its concern that the ongoing reform of the social security system may have adverse consequences for the underprivileged sectors of society.

24. The Committee notes with concern the high costs of health services in Switzerland that are administered by private companies, which must be paid for in full by both workers and pensioners, to the consequential detriment of their standard of living.

E. Suggestions and recommendations

25. The Committee suggests that the State party take appropriate steps to give full legal effect to the Covenant, so that the rights covered by it may be fully integrated into the legal system.

26. The Committee recommends that the cantonal laws should be further harmonized, to ensure due respect for the provisions of the Covenant, particularly with regard to fundamental rights such as the right to work, education and culture.

27. The Committee recommends that the State party accord equal treatment to both International Human Rights Covenants in terms of their domestic legal status and that if measures are taken to incorporate civil and political rights treaty obligations consideration be given to similar measures in relation to economic, social and cultural rights.

28. The Committee recommends that the draft legislation concerning the right of civil servants to strike be adopted as soon as possible, in line with the State party's obligations under article 8, paragraph 2, of the Covenant.

29. The Committee also recommends that any modification to the statute on civil servants be formulated in such a way as to safeguard the acquired rights of civil servants, as guaranteed in the Covenant.

30. The Committee further recommends early ratification of ILO Conventions Nos. 98 and 174.

31. The Committee recommends that adequate social security protection be provided to pregnant women and recent mothers. The Committee further emphasizes the importance of educational campaigns to develop awareness of the problem of discrimination and recommends that all possible measures be taken, in particular at the social infrastructure level, to make it easier for women who wish to work outside the home to do so.

32. The Committee recommends that the State party intensify its efforts to guarantee men and women equal access to employment and equal wages for work of equal value.

33. The Committee recommends that the State party play a more active role in promoting equal access to higher education for women, immigrants and ethnic minorities.

34. The Committee requests the State party to provide up-to-date information in its next report on measures taken to combat the phenomenon of domestic violence and that of paedophilia.

35. The Committee also requests the State party to provide more detailed information in its next report on the situation of the mental health of the population and in particular of mental patients in the country and on progress achieved in this field.

36. The Committee recommends that the State party, in accordance with article 12, paragraph 3 (d), of the Covenant, review its systems of health care to prevent the high costs of these from having a negative effect on the standard of living of families, which is incompatible with article 11, paragraph 1 of the Covenant.

37. The Committee requests the State party to disseminate its concluding observations widely among all levels of society and to inform the Committee on all steps taken to implement them. It also urges the Government to consult with non-governmental organizations in the preparation of the second periodic report.